

**States District Court
District of Massachusetts**

CIVIL ACTION: 05-30018-MAP

Ahmad A. Sharif,

PLAINTIFF

v.

**City of Springfield Police Department and
Lt. Cheryl Clapprod,**

DEFENDANTS

PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

Plaintiff respectfully move the Court, pursuant to Fed. R. Civ. P. 15(a), for leave to file his First Amended Complaint. This motion is based upon this document and pleadings on file in this case. Along with this motion, Plaintiff is filing a motion to remand to state court and a memorandum in support of Plaintiff's motion to remand to state court.

The proposed First Amended Complaint, which does not add any causes of action, makes the following changes:

- (a) Deletes only one count, [Count sixty-one (61)], that Plaintiff's civil action involves a controversy between the parties and a declaration as to the respective rights and duties of the parties, pursuant to 28 U.S.C. §2201 and 2202 for injunctive relief.

ARGUMENT

I. STANDARD FOR GRANTING LEAVE TO AMEND

Mass.R.Civ.P. 15(a) states in part: "a party may amend his pleading only by leave of court **or by** written consent of the adverse party; and leave shall be freely given when justice so requires." Mass.R.Civ.P. 15(c) states: "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment (including an amendment changing a party) relates back to the original pleading." Judges have broad discretion in ruling on motions to amend. All Seasons Services, Inc. v. Commissioner of Health & Hospitals of Boston, 416 Mass. 269, 272, 620 N.E.2d 778 (1993).

II. LEAVE TO AMEND SHOULD BE GRANTED

Plaintiff's motion to amend should be granted "unless there appears some good reason for denying the motion." Goulet v. Whittin Mach. Works, Inc., 399 Mass. 547, 549, 506 N.E.2d 95 (1987). Based on the factors set forth in All Seasons Services, Inc. v. Commissioner of Health & Hospitals of Boston, Plaintiff should be granted leave to file the First Amended Complaint. Here, the proposed amendment was not unduly delayed, is not futile, and will not cause undue prejudice against the defendants. Defendants cannot demonstrate any prejudice, because they will have ample time to prepare its case in response to the First Amended Complaint, which adds no new causes of action. Moreover, this case should be remanded to State Court.

A. Defendant Would Not Suffer Prejudice

Defendants would suffer no prejudice from the filing of the First Amended Complaint. As one court has explained, denial of a motion to amend is justified in circumstances of undue delay, undue prejudice to the opposing party, and futility. Castellucci v. United States Fidelity and Guaranty Co., 372 Mass. 288, 290, 361 N.E.2d 1264 (1977).

B. The First Amended Complaint Is Not Futile

The First Amended Complaint does not add any new causes of action and, therefore, nothing in the complaint is futile. Instead, the First Amended Complaint clarifies the jurisdiction issue in this litigation, in response to incorrect claims by Defendants that Plaintiff's complaint should be heard by this Court.

C. There Is No Undue Delay Or Bad Faith

There is no undue delay. This case was filed in the Hampden County Superior Court on January 7, 2005, and Defendants filed a notice of removal with this court on January 21, 2005. Defendant City of Springfield Police Department has not answered Plaintiff's complaint.

III. CONCLUSION

The motion for leave to file a First Amended Complaint should be granted. The Defendants would suffer no prejudice from the filing of that complaint, nothing in the complaint is futile, and Plaintiff is not acting in bad faith or for a dilatory motive. To the contrary, the First Amended Complaint would clarify the issue of jurisdiction.

Dated: February 4, 2005

Respectfully submitted,
Ahmad A. Sharif
By his Attorney,

/s/Tammy Sharif
Tammy Sharif, Esq., BBO# 659134
The Walker Building
1242 Main Street, Suite 314
Springfield, MA 01103
Ph. (413)439-0200 / FAX 413-785-0801

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Complainant's Amended Complaint was this day served upon all parties to this action by mailing same, first class postage prepaid, to all Attorneys of record.

SIGNED under the pains and penalties of perjury.

Dated: February 4, 2005

Respectfully submitted,
Ahmad A. Sharif
By his Attorney,

/s/Tammy Sharif
Tammy Sharif, Esq., BBO# 659134
The Walker Building
1242 Main Street, Suite 314
Springfield, MA 01103
Ph. (413)439-0200 / FAX 413-785-0801